

JOLENE K. SHEETS
Claimant

HILLTOP MANOR INC.
Respondent

CONNECTICUT INDEMNITY CO.
Insurance Carrier

ORDER

ISSUES

The issues raised on review by the respondent include whether claimant gave timely notice and whether the claimant's accidental injury arose out of and in the course of employment.

FINDINGS OF FACT

The claimant, an eight year employee with respondent, was employed as a full-time cook. Her job duties included preparation of breakfast and lunch as well as cleaning. On April 11, 2001, claimant had gone to the storage room to get some potatoes. She bent

over to get the potatoes and as she straightened up her back popped and she fell to her knees on the floor.

After claimant got up she leaned her back against an ice chest. As she was leaning against the ice chest her supervisor, Dea Miller, came into the kitchen and asked if claimant was all right. Claimant testified she told Ms. Miller what had just happened. Claimant further testified the supervisor asked if claimant was still able to work and claimant replied she just needed to rest a few minutes and she would then return to work.

Claimant was not asked to complete an incident report nor did she request that an incident report be completed. The claimant and her supervisor did not have any further conversations about the incident.

Claimant completed her work that day and continued working until she sought treatment with her personal physician, Dr. Larry D. Ball, on April 26, 2001. Claimant testified that after the accident her supervisor would occasionally inquire how claimant was doing or how her back was doing.

Claimant also testified she later told her supervisor that she was going to see a doctor and have her back checked because it was hurting. However, claimant did not indicate her condition was work-related nor did she request treatment be provided.

Although claimant testified she told Dr. Ball about the incident at work, his medical record of the visit simply indicated claimant worked for respondent and had back pain for a month. Dr. Ball imposed restrictions and when claimant provided her supervisor with the restrictions she was not allowed to continue working.

Claimant additionally sought treatment with Dr. Bruce Veach, a chiropractor, on April 30, 2001. Although claimant testified she explained about the incident at work the doctor's notes of that visit reflect that claimant's back just went out. Claimant had filled out a form explaining the reason for her visit. The form contained a line which requested the patient to circle whether the reason for the visit was a result of either work, sports, auto, trauma or chronic. Claimant did not circle any of the options and simply wrote "Back just went out."

The claimant's supervisor, Dea Miller, testified regarding her conversation with claimant on April 11, 2001:

Q. That's all right. Now, do you recall -- well, strike that. You also heard testimony about the conversation that she had with you about ten minutes later. Is that right?

A. You know, I don't recall that in the respect that she said her back had popped, that kind of thing, no.

Q. If Ms. Sheets had come to you with that testimony that she gave earlier today, what would your responsibilities have been?

A. I would have asked her how she felt, if she was able to continue working, and then after that it would have been a matter of, you know, what progressed to happen.

Q. Would you have filled out an incident report?

A. No, not at that time. I would have to know that she had actually been injured.

Q. And I guess my question is if Ms. Sheets had come to you on April 11th and said that she'd had an incident where she was lifting this bowl of potatoes and her back went out, would that have driven you to fill out an incident report?

A. We would have had to have an incident report, yes.¹

Ms. Miller further testified that it was possible she had the conversation with claimant but just did not remember it. Moreover, she testified:

Q. You heard Ms. Sheets testify about the conversation that she says that she had with you and that she indicated you asked how she felt, could she continue working. That would be consistent with the type of conversation you would expect to have with somebody who's reported a work-related injury. Is that correct?

A. Yes.²

Ms. Miller noted that when claimant provided the work-release slips from Dr. Ball there was no discussion regarding a work-related condition. Ms. Miller concluded if she had such releases knowing someone had been injured at work, she would have made sure an incident report was filled out.

On June 15, 2001, claimant had a conversation with Vivian Reed, the respondent's administrator, about whether she could get workers compensation and was told no, because she had not filed a report within ten days. Ms. Reed testified claimant simply stated she had used all her vacation and sick leave and asked if she could collect workers

¹Preliminary Hearing Transcript, dated February 19, 2002, at 45-46.

²Ibid, at 49-50.

compensation. Ms. Reed testified she responded that she did not have an incident report and was unaware claimant was injured on the job.

Claimant has an eighth grade education. She was given a copy of the company handbook when she was hired. She testified that although she had read the personnel policies she did not remember the respondent's policy regarding work-related injuries. But claimant was aware the employer had the right to choose the doctor for a work-related injury. She testified she only went to Dr. Ball and Dr. Veach after she had waited two weeks and respondent had not provided treatment.

CONCLUSIONS OF LAW

The Workers Compensation Act places the burden of proof on injured workers to establish their right to compensation.³ And that burden is to persuade the trier of facts by a preponderance of the credible evidence that the injured worker's position on an issue is more probably true than not when considering the whole record.⁴

The Workers Compensation Act requires a worker to provide the employer timely notice of a work-related accident or injury. The Act reads:

Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice.⁵

³K.S.A. 44-501(a).

⁴K.S.A. 44-508(g).

⁵K.S.A. 44-520.

Respondent relies upon the testimony of claimant's supervisor, Dea Miller, that she does not recall being advised of a work-related injury. Respondent further contends the absence of mention of the incident in the reports of the first two doctors claimant sought treatment from corroborates Ms. Miller's testimony. Lastly, respondent argues claimant never requested treatment until her vacation and sick leave was exhausted.

The Administrative Law Judge specifically determined claimant gave oral notice of her injury. The Administrative Law Judge had the opportunity to evaluate all of the witnesses' credibility as all witnesses testified in person at the preliminary hearing. In circumstances such as this, where conflicting evidence provides more than one possible answer, the Board finds it is appropriate to give some deference to the Administrative Law Judge's conclusions.

The claimant testified when she told her supervisor about the incident her supervisor inquired if she could continue to work. The supervisor agreed such inquiry would be consistent with how she would typically respond to a report of a work-related injury. Moreover, the supervisor did not deny the conversation with claimant, instead, she could not recall if it occurred. Lastly, the supervisor agreed she did not always immediately fill out incident reports.

The Board finds claimant's testimony more persuasive than the inconsistencies and the other contrary evidence respondent points to in the record. Therefore, at this point in the proceedings and giving some deference to the Administrative Law Judge's conclusions, the Board finds claimant provided respondent with timely notice of a work-related accident arising out of and in the course of employment.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.⁶

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Nelsonna P. Barnes dated February 19, 2002, is affirmed.

IT IS SO ORDERED.

Dated this 31st day of May 2002.

⁶K.S.A. 44-534a(a)(2).

BOARD MEMBER

c: Joni J. Franklin, Attorney for Claimant
 Eric T. Lanham, Attorney for Respondent
 Nelsonna P. Barnes, Administrative Law Judge
 Philip S. Harness, Workers Compensation Director